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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

HUAWEI TECHNOLOGIES CO., LTD., et al.,

Plaintiffs,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

SAMSUNG ELECTRONICS CO., LTD. &
SAMSUNG ELECTRONICS AMERICA, INC.,

Counterclaim-Plaintiffs,

v.

HUAWEI TECHNOLOGIES CO., LTD.,
HUAWEI DEVICE USA, INC., HUAWEI
TECHNOLOGIES USA, INC., & HISILICON
TECHNOLOGIES CO., LTD.,

Counterclaim-Defendants.

CASE NO. 16-cv-02787-WHO

**DECLARATION OF COLE
MALMBERG IN SUPPORT OF
HUAWEI'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF HUAWEI'S
SUMMARY JUDGMENT AND
DAUBERT MOTIONS**

1 I, Cole Malmberg, declare as follows:

2 1. I am a member of the State Bar of California, admitted to practice before this
3 Court, and an attorney at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, counsel for
4 Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Research
5 America, Inc. (collectively, "Samsung"). Except as otherwise indicated, I have personal
6 knowledge of the facts stated herein and, if called as a witness, could and would testify thereto.

7 2. Pursuant to Civil L.R. 79-5, I make this declaration in support of Huawei's
8 Administrative Motion to File Under Seal Portions of Huawei's Summary Judgment and Daubert
9 Motions (Dkt. 327).

10 3. I have reviewed the portions of Huawei's Motion for Summary Judgment
11 ("Huawei's MSJ"), Huawei's Daubert Motion on Technical Issues ("Huawei's Daubert Motion"),
12 and Huawei's Motion to Preclude Samsung's FRAND Experts from Offering Improper Legal
13 Opinions ("Huawei's Motion to Preclude") and the exhibits to each of those motions that contain
14 or suggest confidential information.

15 **Huawei's MSJ**

16 4. The green highlighted portion on page 9, line 16 of Huawei's MSJ contains
17 information about licensing negotiations conducted between Huawei and Samsung. Those
18 negotiations were subject to a non-disclosure agreement and conducted confidentially. Samsung
19 maintains information about those negotiations as highly confidential and does not disclose it to
20 the public. Disclosure of such information to the public could harm Samsung's competitive
21 standing by giving competitors access to information about Samsung's negotiating practices that
22 Samsung does not have similar access to in return. The green highlighted portion on page 14,
23 lines 3-8 of Huawei's MSJ contains technical information about the Samsung accused products.
24 Samsung maintains this information as a trade secret and does not disclose it to the public.
25 Disclosure of this information to the public could harm Samsung's competitive standing by
26 revealing information that Samsung invested substantial time and resources to develop. Samsung
27 does not maintain a claim of confidentiality over any other green highlighted portions of Huawei's
28 MSJ.

1 5. The yellow highlighted portions on page 9, lines 26-28 and page 10, lines 10-11 of
2 Huawei's MSJ contain information about licensing negotiations conducted between Huawei and
3 Samsung. Those negotiations were subject to a non-disclosure agreement and conducted
4 confidentially. Samsung maintains information about those negotiations as highly confidential
5 and does not disclose it to the public. Disclosure of such information to the public could harm
6 Samsung's competitive standing by giving competitors access to information about Samsung's
7 negotiating practices that Samsung does not have similar access to in return. The yellow
8 highlighted portion on page 13, line 25 through page 14, line 11 of Huawei's MSJ contains
9 technical information about the Samsung accused products. Samsung maintains this information
10 as a trade secret and does not disclose it to the public. Disclosure of this information to the public
11 could harm Samsung's competitive standing by revealing information that Samsung invested
12 substantial time and resources to develop. Samsung does not maintain a claim of confidentiality
13 over any other yellow highlighted portions of Huawei's MSJ.

14 6. The blue highlighted portion on page 14, lines 3-8 of Huawei's MSJ contains
15 technical information about components of the Samsung accused products. Samsung maintains
16 this information as a trade secret and does not disclose it to the public. Disclosure of this
17 information to the public could harm Samsung's competitive standing by revealing information
18 that is currently a source of competitive advantage for Samsung. Samsung does not maintain a
19 claim of confidentiality over any other blue highlighted portions of Huawei's MSJ.

20 7. Samsung does not maintain a claim of confidentiality over Exhibit 1 to Huawei's
21 MSJ.

22 8. The highlighted portions of Exhibit 2 to Huawei's MSJ attached to this declaration
23 contain information about licensing negotiations conducted between Huawei and Samsung. Those
24 negotiations were subject to a non-disclosure agreement and conducted confidentially. Samsung
25 maintains information about those negotiations as highly confidential and does not disclose it to
26 the public. Disclosure of such information to the public could harm Samsung's competitive
27 standing by giving competitors access to information about Samsung's negotiating practices that
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1 Samsung does not have similar access to in return. Samsung does not maintain a claim of
2 confidentiality over any other portions of Exhibit 2 to Huawei's MSJ.

3 9. Samsung does not maintain a claim of confidentiality over Exhibit 7 to Huawei's
4 MSJ.

5 10. Samsung does not maintain a claim of confidentiality over Exhibit 8 to Huawei's
6 MSJ.

7 11. The highlighted portions of Exhibit 9 to Huawei's MSJ attached to this declaration
8 contain information about licensing negotiations conducted between Huawei and Samsung. Those
9 negotiations were subject to a non-disclosure agreement and conducted confidentially. Samsung
10 maintains information about those negotiations as highly confidential and does not disclose it to
11 the public. Disclosure of such information to the public could harm Samsung's competitive
12 standing by giving competitors access to information about Samsung's negotiating practices that
13 Samsung does not have similar access to in return. Samsung does not maintain a claim of
14 confidentiality over any other portions of Exhibit 9 to Huawei's MSJ.

15 12. The highlighted portions of Exhibit 10 to Huawei's MSJ attached to this
16 declaration contain information about licensing negotiations conducted between Huawei and
17 Samsung. Those negotiations were subject to a non-disclosure agreement and conducted
18 confidentially. Samsung maintains information about those negotiations as highly confidential
19 and does not disclose it to the public. Disclosure of such information to the public could harm
20 Samsung's competitive standing by giving competitors access to information about Samsung's
21 negotiating practices that Samsung does not have similar access to in return. Samsung does not
22 maintain a claim of confidentiality over any other portions of Exhibit 10 to Huawei's MSJ.

23 13. Exhibits 11-17 to Huawei's MSJ are documents and communications exchanged
24 over the course of licensing negotiations conducted between Huawei and Samsung. Those
25 negotiations were subject to a non-disclosure agreement and conducted confidentially. Samsung
26 maintains the documents and communications from those negotiations as highly confidential and
27 does not disclose them to the public. Disclosure of such information to the public could harm
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1 Samsung's competitive standing by giving competitors access to information about Samsung's
2 negotiating practices that Samsung does not have similar access to in return.

3 14. The highlighted portions of Exhibit 19 to Huawei's MSJ attached to this
4 declaration contain information about licensing negotiations conducted between Apple and
5 Samsung. Those negotiations were subject to a non-disclosure agreement and conducted
6 confidentially. Samsung maintains information about those negotiations as highly confidential
7 and does not disclose it to the public. Disclosure of such information to the public could harm
8 Samsung's competitive standing by giving competitors access to information about Samsung's
9 negotiating practices that Samsung does not have similar access to in return. Samsung does not
10 maintain a claim of confidentiality over any other portions of Exhibit 19 to Huawei's MSJ.

11 15. Exhibit 20 to Huawei's MSJ is a letter exchanged during the course of licensing
12 negotiations conducted between Huawei and Samsung. Those negotiations were subject to a non-
13 disclosure agreement and conducted confidentially. Samsung maintains the letter as highly
14 confidential and does not disclose its contents to the public. Disclosure of such information to the
15 public could harm Samsung's competitive standing by giving competitors access to information
16 about Samsung's negotiating practices that Samsung does not have similar access to in return.

17 16. Samsung does not maintain a claim of confidentiality over Exhibit 24 to Huawei's
18 MSJ.

19 17. Samsung does not maintain a claim of confidentiality over Exhibit 25 to Huawei's
20 MSJ.

21 18. The highlighted portions on pages 89-90 of Exhibit 26 to Huawei's MSJ attached to
22 this declaration contain technical information about the Samsung accused products. Samsung
23 maintains this information as a trade secret and does not disclose it to the public. Disclosure of
24 this information to the public could harm Samsung's competitive standing by revealing
25 information that Samsung invested substantial time and resources to develop. Samsung does not
26 maintain a claim of confidentiality over any other portions of Exhibit 26 to Huawei's MSJ. All
27 other highlighted portions are those over which Huawei maintains a claim of confidentiality. (*See*
28 Dkt. 327 at 3.)

1 19. Samsung does not maintain a claim of confidentiality over Exhibit 27 to Huawei's
2 MSJ.

3 20. Samsung does not maintain a claim of confidentiality over Exhibit 28 to Huawei's
4 MSJ.

5 21. Exhibit 29 to Huawei's MSJ contains technical information about the Samsung
6 accused products. Samsung maintains this information as a trade secret and does not disclose it to
7 the public. Disclosure of this information to the public could harm Samsung's competitive
8 standing by revealing information that Samsung invested substantial time and resources to
9 develop.

10 22. The highlighted portions of Exhibit 30 to Huawei's MSJ attached to this
11 declaration contain highly confidential information about the conception of the inventions claimed
12 in the Samsung patents-in-suit. Samsung considers this information a trade secret and does not
13 disclose it to the public. Disclosure of this information to the public could harm Samsung's
14 competitive standing by revealing information about the process that Samsung uses to develop
15 new technologies. Competitors could appropriate this information to Samsung's disadvantage in
16 the marketplace. Samsung does not maintain a claim of confidentiality over any other portions of
17 Exhibit 30 to Huawei's MSJ.

18 23. Samsung does not maintain a claim of confidentiality over Exhibit 36 to Huawei's
19 MSJ.

20 24. Samsung does not maintain a claim of confidentiality over Exhibit 38 to Huawei's
21 MSJ.

22 25. Samsung does not maintain a claim of confidentiality over Exhibit 40 to Huawei's
23 MSJ.

24 26. Samsung does not maintain a claim of confidentiality over Exhibit 41 to Huawei's
25 MSJ.

26 27. Samsung does not maintain a claim of confidentiality over Exhibit 42 to Huawei's
27 MSJ.

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1 28. Samsung does not maintain a claim of confidentiality over Exhibit 43 to Huawei's
2 MSJ.

3 **Huawei's Daubert Motion**

4 29. The green highlighted portion on page 16, lines 4-9 of Huawei's Daubert Motion
5 contains information about the operation of the Samsung accused products. Samsung maintains
6 this information as a trade secret and does not disclose it to the public. Disclosure of this
7 information to the public could harm Samsung's competitive standing by revealing information
8 that Samsung invested substantial time and resources to develop. Samsung does not maintain a
9 claim of confidentiality over any other portions of Huawei's Daubert Motion.

10 30. Samsung does not maintain a claim of confidentiality over Exhibit 1 to Huawei's
11 Daubert Motion.

12 31. The green highlighted portions of Exhibit 2 to Huawei's Daubert Motion attached
13 to this declaration contain information that Samsung maintains as highly confidential and does not
14 disclose to the public. Certain portions (on pages 29, 39, 55, 56, 65, 66, and 74) reference a
15 document created by Qualcomm and provided to Samsung for informational purposes. That
16 document is marked as "Confidential and Proprietary" by Qualcomm and was produced in this
17 case under the "QUALCOMM CONFIDENTIAL BUSINESS INFORMATION – OUTSIDE
18 ATTORNEYS' EYES ONLY" designation pursuant to the Supplemental Protective Order (Dkt.
19 125). Samsung does not disclose that document or the information that it contains to the public.
20 Other highlighted portions of Exhibit 2 (on pages 55, 63, 66, 69, 74, and 77) contain information
21 about the operation of the Samsung accused products, including information about the operation
22 of the source code in those products. Samsung maintains this information as a trade secret and
23 does not disclose it to the public. Disclosure of this information to the public could result in harm
24 to Samsung because its competitors could appropriate valuable information that Samsung
25 expended considerable time and resources to develop. Aside from the aforementioned highlighted
26 portions, Samsung does not maintain a claim of confidentiality over any other portions of Exhibit
27 2 to Huawei's Daubert Motion. The yellow highlighted portions were highlighted in the original
28 version of the document and do not contain any Samsung confidential information.

1 32. Samsung does not maintain a claim of confidentiality over Exhibit 7 to Huawei's
2 Daubert Motion.

3 33. Samsung does not maintain a claim of confidentiality over Exhibit 8 to Huawei's
4 Daubert Motion.

5 34. Samsung does not maintain a claim of confidentiality over Exhibit 10 to Huawei's
6 Daubert Motion.

7 35. Samsung does not maintain a claim of confidentiality over Exhibit 11 to Huawei's
8 Daubert Motion.

9 36. Samsung does not maintain a claim of confidentiality over Exhibit 12 to Huawei's
10 Daubert Motion.

11 37. Samsung does not maintain a claim of confidentiality over Exhibit 14 to Huawei's
12 Daubert Motion.

13 38. The highlighted portions of Exhibit 15 to Huawei's Daubert Motion attached to this
14 declaration contain information about the operation of the Samsung accused products, including
15 information about the operation of the source code in those products. Samsung maintains this
16 information as a trade secret and does not disclose it to the public. Disclosure of this information
17 to the public could result in harm to Samsung because its competitors could appropriate valuable
18 information that Samsung expended considerable time and resources to develop. Samsung does
19 not maintain a claim of confidentiality over any other portions of Exhibit 15 to Huawei's Daubert
20 Motion.

21 39. The highlighted portion of Exhibit 17 to Huawei's Daubert Motion attached to this
22 declaration contains information about the operation of the Samsung accused products and the
23 components within those products. Samsung maintains this information as a trade secret and does
24 not disclose it to the public. Disclosure of this information to the public could result in harm to
25 Samsung because its competitors could appropriate valuable information that Samsung expended
26 considerable time and resources to develop. Samsung does not maintain a claim of confidentiality
27 over any other portions of Exhibit 17 to Huawei's Daubert Motion.

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1 40. Samsung does not maintain a claim of confidentiality over Exhibit 20 to Huawei's
2 Daubert Motion.

3 41. Samsung does not maintain a claim of confidentiality over Exhibit 23 to Huawei's
4 Daubert Motion.

5 42. Samsung does not maintain a claim of confidentiality over Exhibit 24 to Huawei's
6 Daubert Motion.

7 43. Samsung does not maintain a claim of confidentiality over Exhibit 25 to Huawei's
8 Daubert Motion.

9 44. Samsung does not maintain a claim of confidentiality over Exhibit 29 to Huawei's
10 Daubert Motion.

11 45. Samsung does not maintain a claim of confidentiality over Exhibit 30 to Huawei's
12 Daubert Motion.

13 **Huawei's Motion to Preclude**

14 46. Samsung does not maintain a claim of confidentiality over Huawei's Motion to
15 Preclude.

16 47. The highlighted portions of Exhibit 2 to Huawei's Motion to Preclude attached to
17 Huawei's Administrative Motion to File Under Seal contain information about licensing
18 negotiations conducted between Huawei and Samsung. Those negotiations were subject to a non-
19 disclosure agreement and conducted confidentially. Samsung maintains information about those
20 negotiations as highly confidential and does not disclose it to the public. Disclosure of such
21 information to the public could harm Samsung's competitive standing by giving competitors
22 access to information about Samsung's negotiating practices that Samsung does not have similar
23 access to in return. Samsung does not maintain a claim of confidentiality over any other portions
24 of Exhibit 2 to Huawei's Motion to Preclude.

25 48. The highlighted portions of Exhibit 3 to Huawei's Motion to Preclude attached to
26 this declaration contain highly confidential information about Samsung's manufacturing and sale
27 of smartphones. Samsung maintains this information as a trade secret and does not disclose it to
28 the public. Disclosure of this information to the public could harm Samsung's competitive

1 standing by giving its competitors insight into Samsung's operations and finances. Samsung does
2 not have similar access to this information about its competitors and would thus be disadvantaged
3 in the marketplace. Samsung does not maintain a claim of confidentiality over any other portions
4 of Exhibit 3 to Huawei's Motion to Preclude.

5 49. Samsung does not maintain a claim of confidentiality over Exhibit 4 to Huawei's
6 Motion to Preclude.

7 50. Samsung does not maintain a claim of confidentiality over Exhibit 5 to Huawei's
8 Motion to Preclude.

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10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct. Executed July 9, 2018, in Redwood Shores, California.

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13 /s/ Cole Malmberg

14 Cole Malmberg
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ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), the undersigned attests that concurrence in the filing of this document has been obtained from Cole Malmberg.

/s/ Victoria F. Maroulis
Victoria F. Maroulis